

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17515 of Abdul Kamara, pursuant to 11 DCMR § 3104.1, for a special exception to construct a four (4) unit apartment building under § 353, in the R-5-A District, at premises 5031 B Street, S.E. (Square 5325, Lot 10).

HEARING DATE: September 26, 2006

DECISION DATE: October 3, 2006

DECISION AND ORDER

This application was submitted by Abdul Kamara (“Applicant”) on May 1, 2006, the owner of the property that is the subject of the application (“subject property”). This self-certified application requested special exception approval pursuant to §§ 353 and 3104 of the Zoning Regulations in order to construct a 4-unit apartment building in an R-5-A District.

The Board heard the case on September 26, 2006, and decided, 5-0-0, to grant the special exception at its October 3, 2006 decision meeting.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 8, 2006, the Office of Zoning (“OZ”) gave notice of the filing of the application to the Office of Planning (“OP”), the D.C. Board of Education, the D.C. Departments of Transportation (“DDOT”) and Housing and Community Development (“DHCD”), Advisory Neighborhood Commission (“ANC”) 7E, the Single Member for Single Member District 7E05, and the Council Member for Ward 5. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and on June 20, 2006, mailed notice to ANC 7E, the Applicant, and all owners of property within 200 feet of the subject property, advising them of the date of the hearing.

Requests for Party Status. ANC 7E was automatically a party to this proceeding, but there were no other requests for party status.

Applicant’s Case. The project architect presented the Applicant’s case and explained how the project was compatible with the area and satisfied the Zoning Regulations.

Government Reports. The Office of Planning submitted a report to the Board dated September 19, 2006 recommending approval of the relief requested. OP opined that the

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

building is compatible with the character of the neighborhood and that it would not impact the neighbors' light and air. OP did, however, request a landscaping plan and recommended several changes to the project, *to wit*: additional fenestration, architectural window treatments, and a lower retaining wall.

The Department of Housing and Community Development ("DHCD") submitted a report dated July 28, 2006 in support of granting the requested relief. DHCD agreed with OP that the building is compatible with the character of the neighborhood, and also pointed out that the building meets all the dimensional requirements of the Zoning Regulations while providing 2-bedroom units that will better house families.

ANC Report. ANC 7E submitted a report to the Board dated August 22, 2006 recommending denial of the requested relief. The ANC report stated that the site was too small for the use proposed and that the ANC members did not desire another apartment building on the block where the subject property is located. At the hearing, however, the ANC representatives explained that the ANC was actually opposed to rental units, and that the ANC was not opposed to the building if it offered for-sale units.

FINDINGS OF FACT

1. The subject property is located at address 5031 B Street, S.E., at Square 5325, Lot 10, in an R-5-A zone district.
2. The property is 40 feet wide and 100 feet deep, with an area of 4,000 square feet, and is currently vacant and wooded, with a slope of approximately 4 feet from west to east.
3. The property is an interior lot with no rear alley access.
4. Just to the west of the property is an empty, boarded-up, 12-unit apartment building whose entrance and parking lot face the subject property. Immediately to the east is a single-story single-family dwelling.
5. The neighborhood exhibits a mixture of small apartment buildings, single-family dwellings, and vacant, wooded lots.
6. The Applicant proposes to construct a 3-story plus basement apartment building with one two-bedroom unit on each floor, including in the basement, for a total of four units.
7. The four units will not be rental units, but will be for-sale condominiums offered so as to be affordable to persons with incomes within the range of 60 to 80% of the average median income for the area.

8. The building will be 37 feet tall and will be set back from B Street approximately six feet.
9. Four 2.5-foot high mechanical enclosures will be located on the roof.
10. The only front entrance to the building will face B Street and there will be no rear or service entrance abutting a street or front yard.
11. There will be no exterior stairway on the building.
12. The building will be conforming in all respects to the area requirements of the R-5-A zone district, with side yards of 9 feet each, and a rear yard thirty-six feet deep, where 4 on-site parking spaces will be located.
13. The 4 rear parking spaces will be accessed by a driveway leading from a curb cut on B Street and running along the east side of the building to its rear.
14. The building's height is typical of apartment buildings in the neighborhood, and the building will not impede the flow of light or air to any nearby property.
15. Because the building will be constructed within all the dimensional parameters required by the Zoning Regulations, there is sufficient open space around the building, and even with the addition of windows on the west side of the building per OP's recommendation, there will be no impingement on the privacy of adjacent buildings.
16. The grassy swale on the western side of the building will be landscaped and planted with a variety of ornamental trees and shrubs.
17. The Applicant will be re-grading the property and, with a combination of underground and above-ground flow, will capture water and direct it toward B Street, where it will run downhill toward 51st Street, S.E.
18. Along with the re-grading, the Applicant will be using retaining walls, which will be 12 inches wide, four feet high at the highest point, and constructed of split-face blocks, providing a more attractive surface than commonly-used cinderblocks.
19. There will be a 4-foot tall pre-fabricated trash enclosure located near the front of the building and accessed by a path of concrete pavers. The enclosure will be screened by the ornamental plantings and will stand on posts above the ground so as not to impede drainage.

20. Lighting for the front of the building will be placed on the exterior of the building, but pole-mounted lighting directed toward the interior of the property will be used to illuminate the side and rear yards and parking area.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, the special exception will be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property.” 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and § 353 of the Zoning Regulations. Section 353 further requires compliance with the standards set forth in § 410.¹

Both § 3104.1 and § 353 set forth general compatibility parameters for special exceptions to which they apply. Section 3104 speaks to harmony with the Zoning Regulations and no adverse impact on nearby properties. Section 353 speaks to the relationship of the project with local public services, such as schools, public streets, and public recreation facilities. Section 353 further requires the Board to refer the application to OP for a recommendation on “the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading” as they relate to the project itself and the surrounding neighborhood. *See*, 11 DCMR § 353.4.

The proposed project meets all the requirements of both §§ 3104.1 and 353. The density of the project is in harmony with its R-5-A zoning and meets all the dimensional requirements of the zone district. Proper building height, side, and rear yards are to be provided, ensuring the unimpeded flow of light and air around the building and surrounding buildings. With 9-foot side yards, there will be no infringement on the privacy of the buildings on either side. Sufficient off-street parking is to be provided in the rear yard, helping to avoid any parking impacts from the project. No significant traffic impact is expected from the project’s modest number of units. The small apartment house nature of the use is compatible with other uses on the street and the scale and massing of the building is in character with the surrounding neighborhood.

Pursuant to §§ 353.3 and 353.4, the Board referred the application to the D.C. Departments of Transportation, Housing and Community Development, and Planning. DDOT did not file a report with the Board, but DHCD filed a report dated July 28, 2006, fully supporting the project. DHCD notes that the units will be sold as affordable

¹Since the decision in this case, § 410 has been repealed by the Zoning Commission, but it was in force at the time of the hearing on this application.

condominium units. OP, after having examined and analyzed all the aspects of the project set forth in § 353.4, filed a report recommending approval of the special exception, with several suggestions to the Applicant and the Board for project improvements. The Applicant took all of OP's suggestions, and has, therefore, added more fenestration and new architectural window treatments, and has lowered its retaining wall height to a maximum of four feet. The Applicant has also provided an appropriate trash enclosure and inward-directed pole-mounted lighting around the perimeter of the property. The perimeter placement and inward direction of the lighting will prevent spill-over into adjacent properties.

Section 410 was intended to apply to, as its title implies, "groups of residential buildings in R-5" districts. Therefore, most of its provisions do not apply to the Applicant's project. Those that do, however, are satisfied by the project.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended approval of the special exception and the Board agrees.

ANC 7E, however, in its written report, recommended against approval of the special exception. The ANC report, dated August 22, 2006, stated that the Applicant's site was too small for a 4-unit apartment building and that the ANC was against any more apartment buildings on this particular block. At the hearing, however, the ANC representatives explained that the ANC was specifically opposed to a building with rental apartment units, but was not opposed to a building with for-sale condominium units. The Applicant assured the Board and the ANC that the project will be offering four for-sale condominiums, and not rental units. Therefore, the Board concludes that the ANC's opposition as stated in its written report, is, in effect, moot.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to construct a 4-unit apartment building pursuant to 11 DCMR § 353. It is therefore **ORDERED** that the application is hereby **GRANTED**.

**VOTE: 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II
 Ruthanne G. Miller and Michael G. Turnbull to approve.)**

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.

Each concurring Board member has approved the issuance of this order.

ATTESTED BY: 
JERRILY R. KRESS, FAIA L
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 05 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on **FEBRUARY 5, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Ike Agbim, RA
1300 Mercantile Lane, Suite 122
Largo, Maryland 20774

Chairperson
Advisory Neighborhood Commission 7E
5001 Hanna Place, S.E.
Washington, D.C. 20019

Single Member District Commissioner 7E05
Advisory Neighborhood Commission 7E
5001 Hanna Place, S.E.
Washington, D.C. 20019

Bill Crews
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Councilmember
Ward Seven
1350 Pennsylvania Avenue, N.W., Suite 506
Washington, D.C. 20004


Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002


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Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern
General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

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